IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9890 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RABARI RAJUBHAI KAMABHAI

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR UR BHATT AGP for Respondent No. 1,2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 12/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 7/7/2000 Annexure : A passed by Respondent No. 1 which he has passed in exercise of powers conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "bootlegger" within the meaning of Sec.2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority placed reliance on five different cases lodged in Bhavnagar 'A' Police Station against the detenu. Cases at Serial Nos. 1,3 and 4 are relating to Prohibition Cases, while cases at Serial Nos. 2 and 3 are relating to Indian Penal Code which are referred to in grounds of detention. He placed reliance on statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, the detaining authority verified the statements of said two anonymous witnesses on 6/7/2000 and on the very next day i.e. on 7/7/2000 , he passed an order of detention which is challenged in this writ petition.

3. Though Rule has been served upon each respondent,the respondents have not filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in Memo thereof.

4. Ms. Kachhuvah, the learned advocate for the petitioner has argued that detaining authority who has placed reliance on statements of two anonymous witnesses made verification of two anonymous statements on 6/7/2000 by affixing rubber stamp impression of an endorsement "verified the contents". She has further argued that looking to this short cut method of verification is depricated by this Court that by putting an endorsement of two words itself shows that the detaining authority has not applied his mind before passing order of detention. She has placed reliance on case of JAKIRBHAI RAHIMBHAI NAGORI Vs. DISTRICT MAGISTRATE, MAHESANA AND OTHERS, reported in 1996()1) GLH 300. In that case, detaining authority only put an endorsement of one word "verified" below statements of such witnesses. This Court held that the claim of privilege made by the detaining authority on the basis of such endorsement was not genuine and therefore continued detention of the detenu was held to be illegal, and in that case, order of detention was set aside and the detenu of that case was released.

5. Here in this case, the detaining authority has put an endorsement of words "verified the contents", and therefore, claim of privilege made by detaining authority

under Sec.9(2) of the Act is not genuine. In view of the above, the order which is challenged in this writ petition is bad in law, and it requires to be quashed and set aside.

6. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 7/7/2000 passed by Respondent No. 2 which is at Annexure: A is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 12/10/2000. (H.H.MEHTA,J.)
ccshah